

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

*In re:*

LIFSCHULTZ ESTATE MANAGEMENT LLC,  
*Debtor.*

Case No. 16-23144-rdd  
White Plains, New York  
February 7, 2017  
10:45 a.m. - 11:07 a.m.

- TRANSCRIPT -

CHAPTER 11, LIFSCHULTZ ESTATE MANAGEMENT LLC, 16-23144  
HEARING TO CONSIDER APPROVAL OF THE DEBTORS DISCLOSURE  
STATEMENT PURSUANT TO 11 U.S.C (RELATED DOC NOS 30 & 31);  
AFFIDAVIT OF LAWRENCE LIFSCHULTZ STATING OBJECTIONS TO THE  
DEBTOR'S DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. 1125,  
(RELATED DOC #31); FILED BY LAWRENCE LIFSCHULTZ (DOC #41)  
BEFORE THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

A P P E A R A N C E S :

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*(Proceedings recorded by electronic sound recording)*

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1 THE COURT: All right. I'm going to go out of order  
2 here and do Lifschultz Estate Management.

3 MR. PASTERNAK: Good morning again, Your Honor.

4 THE COURT: Good morning.

5 MR. PASTERNAK: Jonathan Pasternak, DelBello Donnellan  
6 for the Debtor in Possession. Bruce Abbott, the Managing Member  
7 of the Debtor is here as well, Your Honor.

8 THE COURT: Okay. Good morning.

9 MR. LIFSCHULTZ: And Lawrence Lifschultz, Pro Se  
10 Creditor.

11 THE COURT: All right. Good morning.

12 MR. LIFSCHULTZ: Good morning.

13 MR. PASTERNAK: Your Honor, Ms. Schiavo, who  
14 represents the Bank, who did not object, asked that I just tell  
15 her that we're staring.

16 THE COURT: Okay.

17 MR. PASTERNAK: Let me just step out. She's in the  
18 hall here.

19 THE COURT: All right.

20 (Pause.)

21 THE COURT: Okay. So, this is the hearing on the  
22 Debtor's disclosure statement. I think the only objection is  
23 Lawrence Lifschultz's objection, correct?

24 MR. PASTERNAK: That's correct, Your Honor.

25 THE COURT: Okay. Okay. So, I've reviewed that, as

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1 well as the disclosure statement. Do you have any changes that  
2 you are making separate and apart from what might happen over  
3 the next 15 minutes or so?

4 MR. PASTERNAK: The only other change is that I got a  
5 call from the Town of the Mamaroneck, and they're claiming there  
6 are some pre-petition taxes. And they have asked that we create  
7 a separate secured class for them. I don't really have any  
8 problem with that. I mean it could be dealt with as an  
9 unclassified claim, but in the amendment, I'm willing to create  
10 them as class one secured.

11 THE COURT: Okay. Did they file any claim?

12 MR. PASTERNAK: Yes, they filed a claim.

13 THE COURT: They did.

14 MR. PASTERNAK: Yes.

15 THE COURT: It's a secured claim?

16 MR. PASTERNAK: Yes. I mean it's for real estate  
17 taxes.

18 THE COURT: Okay. All right. So, it will just be an  
19 allowed claim.

20 MR. PASTERNAK: Yes. There's no dispute over it.

21 THE COURT: A 1(a) allowed claim.

22 MR. PASTERNAK: So, we would propose to add that in a  
23 revision.

24 THE COURT: Okay. All right. So, I've read --

25 MR. PASTERNAK: May I sit down, Your Honor?

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1 THE COURT: Yes. I've read Mr. Lifschultz's, Lawrence  
2 Lifschultz's objection, and I've gone through the plan and  
3 disclosure statement, and I had some comments in response to  
4 both of those things. Or that were prompted by both of those  
5 things. Why don't I go through them?

6 MR. PASTERNAK: Sure.

7 THE COURT: You don't have to accept them, but you  
8 need to explain to me why you aren't accepting them. And, Mr.  
9 Lifschultz, listen carefully and see whether, in addition to  
10 what I'm suggesting the Debtor do to modify this document, you  
11 have anything else that you want to address. Okay?

12 MR. LIFSCHULTZ: Yes, sir.

13 THE COURT: All right. So, the first question I have  
14 is that I know that Mr. Lifschultz is classified in his own  
15 class as a secured claim. How is that a secured claim, as  
16 opposed to a claim? Is there a judicial lien? Is there a  
17 consensual lien with a mortgage? How is that classified?

18 MR. PASTERNAK: Well, going back to what happened in  
19 the Surrogate's Court, there was a settlement of his interest  
20 and he was supposed to receive a million-dollar secondary  
21 mortgage that could be recorded, provided that the first  
22 mortgagee had no objection to it.

23 THE COURT: Okay.

24 MR. PASTERNAK: So, he did go ahead and file that as a  
25 mortgage on the property.

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1 THE COURT: With the County. Okay.

2 MR. PASTERNAK: Yes.

3 THE COURT: All right. I think you should drop a  
4 footnote that just says that.

5 MR. PASTERNAK: Okay.

6 THE COURT: So, if there are any unsecured creditors,  
7 they understand why he's there. You know, if I didn't know the  
8 family history here, I would say to myself, why is this relative  
9 being given a secured claim?

10 MR. PASTERNAK: Right.

11 THE COURT: So, I think you should say he has filed  
12 this mortgage.

13 MR. PASTERNAK: Understood, Your Honor.

14 THE COURT: Okay. The second point I had is, given  
15 the timing here, until a sale happens, I don't think he's  
16 unimpaired, I think he's impaired. Just like the Trust is  
17 impaired. And Class 2 on Page 11 in the disclosure statement  
18 says he's unimpaired. He's impaired like everybody else.

19 MR. PASTERNAK: He should be impaired, because if the  
20 results of the auction don't trickle down to him being paid in  
21 full.

22 THE COURT: And there's a delay of a few months. So,  
23 I think he's impaired. And there is a statement, and I think  
24 this is just a typo, but on Page 21 in the Liquidation Analysis,  
25 it says because all creditors are unimpaired. In fact, they are

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1 all unimpaired. So, that doesn't work. I think you need to say  
2 some other reason why you believe that there'd be better  
3 recovery for any creditor in a liquidation.

4 MR. PASTERNAK: We'll change the reason.

5 THE COURT: But I think that the rationale stated  
6 there in that paragraph just doesn't work. So, you have to have  
7 a different 1129(a)(7) analysis.

8 MR. PASTERNAK: Okay.

9 THE COURT: Related to impairment and un-impairment, I  
10 think you need to clarify here, and I'm not sure that this was  
11 intended or not, but it just raised a question. Both on Page 11  
12 in the disclosure statement, and the similar provision in the  
13 plan that it's describing, it says that unsecured creditors will  
14 receive up to 100 percent of their allowed claims with no  
15 interest. Do you mean that to be no post-petition interest?

16 MR. PASTERNAK: Yes. Right.

17 THE COURT: All right. So, you need to address that.  
18 And it's both in the plan and the disclosure statement.

19 MR. PASTERNAK: Got it. Thank you, Judge.

20 THE COURT: Okay. It's on Page 8 of the plan. Now, I  
21 need you to think about this. I'm not telling you to do this,  
22 but clearly and properly, LSF9 is given, under the plan, their  
23 right to credit bid. It seems to me that you run a risk in not  
24 giving Mr. Lifschultz a right to credit bid, assuming that he  
25 takes care of LSF9. So, maybe you want to take that risk; maybe

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1 it doesn't matter; but I think you should consider that. And if  
2 you give him that right, you need to spell it out in a way that  
3 makes it clear that, yes, he can credit bid, but he needs to  
4 take care of the prior mortgage.

5 MR. PASTERNAK: Subject to.

6 THE COURT: Subject to --

7 MR. PASTERNAK: Right.

8 THE COURT: -- the prior mortgage.

9 MR. PASTERNAK: Of course, Your Honor.

10 THE COURT: Right.

11 MR. PASTERNAK: There was no intent to divest him of  
12 that right under 363(k).

13 THE COURT: Right. Okay.

14 MR. PASTERNAK: He's entitled to it. But, of course,  
15 he has to satisfy the prior lien in full.

16 THE COURT: Yes, it's subject to the prior lien.  
17 Exactly. But conceivably, you know, if the sale price is what  
18 it is, then maybe he doesn't care. On the sale, is there any  
19 update on Houlihan Lawrence retention? I thought I approved  
20 their retention ultimately?

21 MR. PASTERNAK: Yes. Yes.

22 THE COURT: So, you need to update that on Page 7.  
23 Page 7 says that it's *sub judice*, but it's not; I granted that  
24 application.

25 MR. PASTERNAK: That's correct, Your Honor.

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1 THE COURT: All right. So, as far as disclosure goes,  
2 I think you need to also disclose here a couple of things with  
3 respect to the first mortgage. First, Mr. Lifschultz, in his  
4 objection, questions whether either of the two interest-holders  
5 has any interest in the mortgage. So, you need to disclose  
6 that, whether they do or they don't. Whether they're in any way  
7 an investor in the Trust, or beneficiary of the Trust, etcetera.

8 MR. PASTERNAK: Sure.

9 THE COURT: The LSF9 Trust.

10 MR. PASTERNAK: They're not, but I want the Court to  
11 know that.

12 THE COURT: Well, you can put that in a footnote.  
13 Secondly, he raises an issue, which the disclosure statement  
14 itself raises, which is whether the first mortgage claim should  
15 be allowed in the full amount because of the disputes that were  
16 raised earlier. Now, I don't know if the Debtor takes the view  
17 that that's now been resolved by the judgment, and therefore  
18 you're bound by the judgment, or you've just decided to settle  
19 it, but you need to say something on that point.

20 MR. PASTERNAK: Okay. Very good, Your Honor.

21 THE COURT: If it's the judgment, it's easy I think,  
22 because that's *res judicata*. If it's just a determination not  
23 to push those issues anymore, I think you need to at least say  
24 why you're not going to do that anymore.

25 MR. PASTERNAK: It's the former, but we'll disclose

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1 that, Your Honor.

2 THE COURT: Right. Okay. All right. All the cash  
3 payments here are going to come out of the sale or refinancing.

4 MR. PASTERNAK: Correct, Your Honor.

5 THE COURT: Or credit bid. I mean it's going to  
6 happen one way or another, it appears to me. Right? Is there  
7 any scenario where --

8 MR. PASTERNAK: There's another option, sure. The  
9 other option is that --

10 THE COURT: Well, there's the auction sale.

11 MR. PASTERNAK: Oh, no. That the two managing members  
12 have the right of redemption.

13 THE COURT: No, no. But one way or another, by the  
14 deadlines in this plan, the property will be transferred, and  
15 the claims will be dealt with by the value of the property,  
16 right? There's no --

17 MR. PASTERNAK: Yes. Within the constructs of our  
18 liability structure. Of course.

19 THE COURT: Right. Okay. So, I think the only  
20 feasibility issue I have is there is some maintenance that needs  
21 to occur between now and that date. Where is that money coming  
22 from?

23 MR. PASTERNAK: Sure.

24 THE COURT: I mean the operating reports show that  
25 there's a fair amount of money that's been spent on repairs and

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1 things like that.

2 MR. PASTERNAK: Absolutely.

3 THE COURT: So, where is that money coming from?

4 MR. PASTERNAK: That's coming from the Debtor's  
5 principals personally.

6 THE COURT: All right. So, I think you should maybe -  
7 - maybe on Page 23 just say that.

8 MR. PASTERNAK: Sure.

9 THE COURT: You know between now and the sale, the  
10 Debtor will at least perform basic maintenance on the  
11 property --

12 MR. PASTERNAK: Oh, yes.

13 THE COURT: -- that's advanced by the principals.  
14 Okay?

15 MR. PASTERNAK: Well, they're planning on doing that,  
16 and then some, Your Honor.

17 THE COURT: Well, all right. So, you should say that.  
18 Okay. And I think the last disclosure issue that I had in  
19 response to Mr. Lifschultz's objection is, in the disclosure  
20 statement, you have a section that says there are no avoidance  
21 claims, all right. But he raises an issue that's separate and  
22 apart from avoidance claims, which is that there may be claims -  
23 - he asserts there may be claims against the Debtor's two  
24 interest-holders for two different things. The first one is,  
25 the fair rental value of the property to them, which he says

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1 that they have not paid, and should have been paid. The second  
2 thing he says is, and this was much vaguer, but there may be  
3 claims against them for having not accepted offers earlier for  
4 the property. So, I think you need to address those two points.

5 MR. PASTERNAK: Okay. Sure.

6 THE COURT: Because the unsecured creditors may well  
7 not get paid in full here, and if there is that source of  
8 recovery, they need to raise it.

9 MR. PASTERNAK: Well, I've learned more about this,  
10 so, we'll be doing --

11 THE COURT: And it may come up in the best-interest  
12 analysis too. I mean that's something you should address.

13 MR. PASTERNAK: Yes. We'll give an analysis of those  
14 two claims.

15 THE COURT: All right.

16 MR. PASTERNAK: Within the disclosure statement, so  
17 that creditors can decide whether they have any value or not.

18 THE COURT: Right. And whether they want to object to  
19 confirmation on that basis.

20 MR. PASTERNAK: Right.

21 THE COURT: Okay. All right. Now, let me just make  
22 sure I don't have any others.

23 (Pause.)

24 THE COURT: Yes, I did have one other comment.

25 MR. PASTERNAK: Yes, Your Honor?

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1 THE COURT: Because the sale, and in particular the  
2 auction sale, is going to be obviously post-confirmation, I just  
3 wanted to alert you to the fact that there's no specific  
4 reservation of jurisdiction in the court on those issues. And  
5 you may want to put that in, both in the plan and the disclosure  
6 statement. It may well be covered just by 1142, but for  
7 example, and I'm not saying you have to do this; but if you want  
8 to come back and have approval of auction procedures, I don't  
9 want to have any issue where I don't have the jurisdiction to do  
10 that.

11 MR. PASTERNAK: All right.

12 THE COURT: I don't think you have to put it in, but  
13 you might want to put it in just to avoid that issue down the  
14 road.

15 MR. PASTERNAK: It can't hurt, in case the parties  
16 need it.

17 THE COURT: Right. Okay. So, again, on the credit  
18 bid point for Mr. Lifschultz, that comes up in a couple of  
19 places in the plan. It comes up in the definition of credit  
20 bid; it comes up in mechanics for the treatment of both LSF9 and  
21 Mr. Lifschultz; so, there are a couple of places where you deal  
22 with that. So, those are the changes I want you to make.

23 MR. PASTERNAK: Okay.

24 THE COURT: And, so, Mr. Lifschultz, is there anything  
25 else that needs to get addressed?

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1 MR. LIFSCHULTZ: Well, someone pointed out to me  
2 before I came today that there's an entire section that relieves  
3 them of any liability, or criminal liability, or if they were  
4 involved in theft --

5 THE COURT: I read that section of your objection, but  
6 this Debtor just owns the land and the buildings. It doesn't  
7 own anything else. It doesn't own any assets of the estate.  
8 Right? It's newly created; it doesn't own any -- you know, if  
9 cash walked off after the estate was administered, or jewelry  
10 disappeared after the estate was administered or before, those  
11 are not claims that would be against this Debtor, because this  
12 Debtor is really a special purpose entity that owns the property  
13 on Long Island Sound. That's all it owns. So, there's no claim  
14 -- the creditors of this entity don't have claims against this  
15 entity for what happened to assets that this entity doesn't own.

16 MR. LIFSCHULTZ: Well, I think I -- excuse me. I'm  
17 not interrupting you I hope.

18 THE COURT: Go ahead.

19 MR. LIFSCHULTZ: I think at the outset I said that the  
20 bankruptcy court should not be used as a tool to perpetrate  
21 their fraud.

22 THE COURT: Right. But it's --

23 MR. LIFSCHULTZ: In a sense, suddenly, we were moving  
24 in Surrogate's Court to remove my brother as sole executor  
25 because of breaches of fiduciary duty and there were liabilities

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1 that these men had, as depicted in Henry Lievre's damages to the  
2 estate, he estimates in 2011 of \$15.5 million. So --

3 THE COURT: I'm going to say it again, sir, and then  
4 we're going to stop this. All right?

5 MR. LIFSCHULTZ: Okay.

6 THE COURT: I don't particular appreciate being told  
7 that I'm condoning fraud. There are two estates here. There's  
8 the Debtor's estate. That's all the property of the Debtor in  
9 front of me. That's what I have jurisdiction over. And that's  
10 what I have to ensure there's no fraud over. All right?

11 There's another estate, which is your father's estate,  
12 all right? I don't have jurisdiction over that. So, the  
13 property of that estate is not in front of me. You have to deal  
14 with that elsewhere. In the Surrogate's Court if you still have  
15 standing to do so after your settlement. Maybe you do; maybe  
16 you don't; that's not my issue. If you try to bring it into  
17 this case, and I ruled somehow that I had control over it, I  
18 would be reversed immediately, because it doesn't make any  
19 sense. So, you can't raise those issues here. What you can  
20 raise is whether there are claims that this estate, the Debtor's  
21 estate, has against anybody. And those are claims for  
22 potentially living rent-free in the property, and potentially, I  
23 guess, for some way of, I don't know, harming the value of the  
24 real property. But this estate, the Debtor's bankruptcy estate,  
25 is only the real property. It has nothing to do with what

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1 happened in the Surrogate's Court.

2 MR. LIFSCHULTZ: May I respectfully?

3 THE COURT: No. I could not be clearer on that issue,  
4 and you're just wrong on that one. And we're not going to spend  
5 more time on it. That's not what courts are supposed to do.  
6 It's just not the right forum. Whether these people, whether  
7 your relatives did something against you as a beneficiary of  
8 your father's, the decedent's estate, is not before me. You're  
9 not going to get released for anything like that. The only  
10 thing that's going to be dealt with in this case is this  
11 property on Long Island Sound.

12 MR. LIFSCHULTZ: May I ask a question?

13 THE COURT: Yes.

14 MR. LIFSCHULTZ: So, in your view, the probate  
15 exception "under no circumstances" could apply here?

16 THE COURT: That doesn't make any sense, sir. I'm  
17 sorry. I know you're not a lawyer, but that makes no sense.  
18 All right? The probate exception is an exception which isn't  
19 really an exception after the Supreme Court case law that the  
20 bankruptcy court should defer to the probate court. But there's  
21 nothing to defer to here on the issues that you're concerned  
22 about.

23 MR. PASTERNAK: Your Honor, the release language is  
24 simply an 1125(e) explanation.

25 THE COURT: Right. I read that very carefully.

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1 MR. PASTERNAK: All right. I just want to make sure.

2 THE COURT: I read it very carefully.

3 MR. PASTERNAK: You know my office.

4 THE COURT: Okay. And the other objection was that  
5 the interest-holders shouldn't get preferred over the creditors.  
6 But they're not; they're getting the residual. So, that  
7 objection didn't really make sense either. So, I will ask you,  
8 Mr. Pasternak, to email a blackline of the changes to the plan  
9 and the disclosure statement to chambers to see if they're  
10 consistent with my comments. You should copy Ms. Schiavo on  
11 that and Mr. Lifschultz.

12 MR. PASTERNAK: Sure.

13 THE COURT: That's all I'm focusing on is whether  
14 they're consistent with my comments. If you believe they didn't  
15 do that, or there's a glitch, you know you can cc or email  
16 chambers, and we'll review it. And after a couple of days, just  
17 to give people a chance to review it, I'll tell you if you need  
18 to have anything else in there or not to follow up on what was  
19 said today.

20 MR. PASTERNAK: We'll give parties a reasonable  
21 opportunity to review and respond, Your Honor.

22 THE COURT: All right. Okay. And then --

23 MR. PASTERNAK: Of course.

24 THE COURT: Do you have a date for Ms. Li for a  
25 confirmation hearing?

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1 MR. PASTERNAK: We don't.

2 THE COURT: All right. So, you can get that.

3 MR. PASTERNAK: So, I will get one.

4 THE COURT: Right.

5 MR. PASTERNAK: We'll work through that.

6 THE COURT: Okay. The order will probably get entered

7 I would say Friday or Monday given where we are on this.

8 MR. PASTERNAK: That's fine. And I think the dates  
9 are already in April anyway, Your Honor. So, we're fine on  
10 time.

11 THE COURT: Okay. All right.

12 MR. PASTERNAK: All right. Thank you, Judge.

13 THE COURT: Thank you.

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: February 22, 2017

  
Signature of Approved Transcriber